

The time interval in which a party must give notice of an accident is governed by K.S.A. 44-520 which provides in pertinent part:

Except as otherwise provided in this section, proceedings for compensation under the workers compensation act shall not be maintainable unless notice of the accident, stating the time and place and particulars thereof, and the name and address of the person injured, is given to the employer within 10 days after the date of the accident, except that actual knowledge of the accident by the employer or the employer's duly authorized agent shall render the giving of such notice unnecessary.

As previously noted, claimant alleges she was injured on Thursday, March 27, 1997. Ten days after the accident date was Sunday, April 6, 1997. However, claimant argues that since the period of time prescribed is less than 11 days, intermediate Saturdays, Sundays and legal holidays are excluded from the computation, per K.S.A. 60-206(a). See McIntyre v. A. L. Abercrombie, Inc., 23 Kan. App. 2d 204, 929 P.2d 1386 (1996). Therefore, the claimant's time to notify her employer of her accident would have been extended to Thursday, April 10, 1997. Claimant gave notice on April 7, 1997, which would be timely if the intervening Saturdays and Sundays are excluded.

As claimant points out, the Appeals Board has followed the rule announced by the Kansas Court of Appeals in McIntyre on several prior occasions in cases involving the computation of time for the filing of appeals. See e.g. Anderson v. Bill Morris Construction Co., Inc., Docket No. 213,350 (April 1997). In addition, the McIntyre rule was extended to apply to the computation of the seven-day notice requirement under K.S.A. 44-534a in Rayman v. Spears Manufacturing, Docket No. 213,649 (May 1997).

Claimant cites McIntyre for the proposition that the method for computing a 10-day period in workers compensation proceedings is governed by K.S.A. 60-206(a). The Kansas Court of Appeals in McIntyre reversed the Workers Compensation Appeals Board regarding the computation of the time period allowed under K.S.A. 44-551 for appeals from decisions by Workers Compensation administrative law judges to the Workers Compensation Appeals Board. The Court of Appeals, citing K.S.A. 44-551 and K.A.R. 50-18-2, found that K.S.A. 60-206(a) is not limited to civil actions but also applies to any statutorily prescribed period of time where "the 'method for computing such time is not otherwise specifically provided.'" Thus, the Court of Appeals found the method of computing a 10-day period under K.S.A. 60-206(a) applies to workers compensation litigation because the method for computing such time was "not otherwise specifically provided." However, while the Court of Appeals in McIntyre paid substantial attention to K.A.R. 51-18-2, no mention was made of K.A.R. 51-17-1 which states:

Saturdays, Sundays and holidays excluded. The time within which an act is to be done shall be computed by excluding the first day and including the

last; if the last day be a Saturday or Sunday or a statutory holiday, it is to be excluded.

This regulation, which was authorized and made effective in January 1966 and amended on January 1, 1973, was not mentioned by the Kansas Court of Appeals although it does appear applicable. However, as the opinion of the Court of Appeals is now the law, the Workers Compensation Appeals Board has consistently followed the rule announced therein concerning the computation of time. Furthermore, even if Chapter 60 of the Kansas Statutes Annotated were not applicable, in this instance the application of K.A.R. 51-17-1 would produce the same result. As the tenth day fell on a Sunday, claimant would have until the following Monday to give notice, which she did.

As the Board has noted in prior decisions, there is reason to believe that had the Court in McIntyre been apprised of the existence of K.A.R. 51-17-1 a different holding would have resulted. Support for this conclusion is found in the subsequent Court of Appeals decision of Keithley v. Kansas Employment Security Bd. of Review, 23 Kan. App. 2d 732, 935 P.2d 1060 (1997). There the Court held that the applicable administrative regulation concerning the computation of time for appeals controlled. In so holding, the Court said “by its terms, K.S.A. 60-206(a) is to be applied when the method for computing time is not otherwise specifically provided under any law of this state or any rule or regulation lawfully promulgated thereunder.” Keithley at 734. K.A.R. 51-17-1 specifically provides the method for computing time under the Workers Compensation Act.

Furthermore, the Kansas Supreme Court has often reiterated the longstanding rule that the Workers Compensation Act is complete unto itself and that the Code of Civil Procedure is not applicable thereto.

“Kansas appellate decisions are replete with statements that the Workers Compensation Act undertook to cover every phase of the right to compensation and of the procedure for obtaining it, which is substantial, complete, and exclusive. We must look to the procedure of the Act for the methods of its administration. Rules and methods provided by the Kansas Code of Civil Procedure not included in the Act itself are not available in determining rights thereunder.” Jones v. Continental Can Co., 260 Kan. 547, Syl. ¶ 3, 920 P.2d 939 (1996).

The McIntyre decision dealt with the 10-day appeal time under K.S.A. 44-551. That statute was amended by the 1997 legislature to codify the result in McIntyre. However, that amendment, which took effect July 1, 1997, applies only to the computation of time for the 10-day period provided for appeals to the Board from decisions by an administrative law judge. The Court of Appeals in McIntyre applied K.S.A. 60-206(a) to workers compensation actions because that subsection specifically provides:

“When an act is to be performed within any prescribed time under any law of this state, or any rule or regulation lawfully promulgated thereunder, and the method for computing such time is not otherwise specifically provided, the method prescribed herein shall apply.” (Emphasis added.)

K.S.A. 60-206(a) is not limited by its terms to only Chapter 60 proceedings. The Appeals Board considers the McIntyre decision controlling. The McIntyre decision was clearly intended to apply to all computations of time in workers compensation cases where the computation is of a period of time of less than 11 days. The Appeals Board finds the McIntyre decision enlarges the time for giving notice of accident under K.S.A. 60-520. As the Appeals Board finds McIntyre is applicable to the issue of computation of the 10 days for giving notice, accordingly, claimant’s notice given on April 7, 1997, was given within 10 days as required by K.S.A. 44-520.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the September 9, 1997, Order by Administrative Law Judge Julie A. N. Sample should be, and is hereby, reversed and this matter is remanded to the Administrative Law Judge for further consideration of claimant’s request for preliminary benefits.

IT IS SO ORDERED.

Dated this ____ day of December 1997.

BOARD MEMBER

c: James R. Shetlar, Overland Park, KS
Patrick M. Salsbury, Topeka, KS
Julie A. N. Sample, Administrative Law Judge
Philip S. Harness, Director